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United States Trustee for Region 17

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re	)	Case No. 18-30924 HLB
	)	
ARCHER NORRIS,	)	Chapter 11
A Professional Law Corp.,	)	
	)	Date: August 29, 2018
	)	Time: 9:00 a.m.
	)	Place: Honorable Hannah L. Blumenstiel
Debtor.	)	450 Golden Gate Avenue
	)	Courtroom 19
	)	San Francisco, CA 94102

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**THE UNITED STATES TRUSTEE'S OMNIBUS OBJECTION TO  
DEBTOR'S FIRST DAY MOTIONS [ECF NOS. 11 & 14]**

Tracy Hope Davis, United States Trustee for Region 17 (the "United States Trustee"), hereby objects (the "Omnibus Objection") to the following first day motions (collectively, the "First Day Motions") filed by captioned debtor Archer Norris, a Professional Law Corporation (the "Debtor"): <sup>1</sup>

- (i) *Debtor's Emergency Motion for Authority to Pay Prepetition Wages, Compensation and Employee Benefits* (ECF No.<sup>2</sup> 11) ("Wages Motion"); and

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<sup>1</sup> Hereafter, all references to "Section" in the Objection are to provisions of the "Bankruptcy Code," 11 U.S.C. §§ 101-1532, unless otherwise indicated. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure.

<sup>2</sup> "ECF No." refers the main bankruptcy docket for Archer Norris, Case No. 18-30924 HLB.

1 (ii) *Debtor's Emergency Motion For An Order Authorizing Interim and Final Use of*  
2 *Cash Collateral; Granting of Replacement Lien To MUFG Union Bank, N.A.; and*  
3 *Scheduling Final Hearing Pursuant To Bankruptcy Rule 4001* (ECF No. 14)  
4 ("Cash Collateral Motion").

5 The United States Trustee requests that the Court take judicial notice of the pleadings and  
6 documents filed in this case pursuant to Federal Rule of Bankruptcy Procedure 9017 and Federal  
7 Rule of Evidence 201. The United States Trustee reserves the right to supplement the facts  
8 contained herein, which are based solely on the factual assertions of the Debtor or its agents in  
9 the First Day Motions. To the extent that this Omnibus Objection contains factual assertions  
10 predicated upon statements made by the Debtor or its agents, the United States Trustee submits  
11 that such factual assertions are supported by admissible evidence in the form of admissions of a  
12 party opponent under Fed. R. Bankr. P. 9017 and Fed. R. Evid. 801(d)(2).  
13

#### 14 **I. INTRODUCTION**

15 The Debtor's requests for relief in the First Day Motions should either be (a) denied  
16 outright or (b) significantly limited by Court order solely to a level that it is absolutely necessary  
17 to sustain the Debtor's operations. As to each of the First Day Motions, the Debtor has failed to  
18 meet its evidentiary burden for the relief requested, thereby mandating denial of the Debtor's  
19 requests for relief at this early stage of the case. To date, Schedules or Statement of Financial  
20 Affairs have not been filed. An official committee of unsecured creditors has not been formed,  
21 and a 341 meeting of creditors has not been held. Therefore, the relief requested in the First Day  
22 Motions is premature and the Court should not grant final approval of the First Day Motions at  
23 this time. Based upon the representations in the First Day Motions, and in view of the proposed  
24 dissolution, by the Debtor's own admission there are concerns about the Debtor's solvency and  
25 ability to reorganize.  
26  
27

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1       **II.     STATEMENT OF FACTS**

2           1.       On August 22, 2018, the Debtor commenced the captioned case by filing a  
3 voluntary petition<sup>3</sup> for relief under chapter 11 of the Bankruptcy Code (“Petition Date”) in  
4 conjunction with a plan of dissolution. ECF No. 1. On the same date, the Debtor filed its list of  
5 20 largest unsecured creditors. *Id.*

6  
7           2.       The Debtor, however, has not filed its schedules of assets or liabilities or a  
8 statement of financial affairs as required to be filed under 11 U.S.C. § 521 and FRBP 1007, and  
9 as a result, the Court issued a notice of deficient filing requiring the Debtor to comply by  
10 September 5, 2018. ECF Nos. 5 and 6.

11  
12          3.       On August 24, 2018, the Debtor filed its First Day Motions, the Declarations of  
13 Douglas C. Straus (the “Straus Declaration”) in support of the Wages Motion and Cash  
14 Collateral Motion and the Declaration of Russell K. Burbank (the “Burbank Declaration”) in  
15 support of the Cash Collateral Motion. ECF Nos. 11, 13, 14 and 16. The Debtor also included a  
16 proposed Budget in support of the Cash Collateral Motion, which is attached as Exhibit A to the  
17 Burbank Declaration. ECF No. 14.

18  
19          4.       On August 28, 2018, at 1:00 p.m., the United States Trustee will hold a formation  
20 meeting to determine interest in forming a creditors’ committee.

21          5.       The Section 341 meeting of creditors is scheduled for September 25, 2018 at  
22 10:00 a.m. *See* docket text entry dated August 22, 2018.

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<sup>3</sup> Douglas C. Strauss signed the voluntary petition on behalf of the Debtor. However, all the subsequent filings refer to “Douglas C. Straus.”

1                   **First Day Motions**

2                   6.       The Debtor is a 70-lawyer litigation firm with four offices located in Walnut  
3 Creek, San Francisco, Newport Beach and Los Angeles. ECF No. 13, Straus Declaration, ¶ 4.  
4 As of the Petition Date, the Debtor had approximately 60 non-lawyer employees. *Id.*

5  
6                   7.       Debtor filed this chapter 11 case in conjunction with a plan of dissolution  
7 designed, among other things, to facilitate the wind down of its operations and the smooth  
8 transition of client matters to successor firms. *Id.* at ¶ 5.

9  
10                  8.       Debtor states it proposes to pay prepetition wages only for those employees who  
11 are still employed by the Debtor as of September 7, 2018 (“Remaining Employees”). *Id.* at ¶ 7.  
12 The Debtor projects that it will have approximately \$302,634 in accrued and unpaid pre-petition  
13 payroll that needs to be paid to Remaining Employees on September 7, 2018. *Id.* However, no  
14 list of employees or precise amounts to be paid each of the Remaining Employees was attached  
15 to the Wages Motion. *See* ECF Nos. 11, 13. The Wages Motion also fails to address whether  
16 any of the Remaining Employees are insiders. *Id.* It also fails to address whether any of the  
17 Remaining Employees received notice of this bankruptcy case. *Id.*

18  
19                  9.       Pursuant to the plan of dissolution, the Debtor anticipates that all lawyers and  
20 client matters will be transitioned to other law firms and will have left the firm’s premises as of  
21 the close of business on September 14, 2018. ECF No. 16, Straus Declaration, ¶ 13. The Debtor  
22 also anticipates surrendering all of its leased premises to respective landlords as soon as possible,  
23 subject to Court approval. *Id.*

24  
25                  10.       Prior to Petition Date, Debtor engaged Russell K. Burbank of BPM, LLP  
26 (“BMP”) as its financial advisor<sup>4</sup> to prepare an analysis for Debtor’s Board of Directors with  
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<sup>4</sup> To date, however, an application to employ BMP as the Debtor’s financial advisor has not been  
filed with the Court. *See* bankruptcy docket for Archer Norris, a Professional Law Corporation,  
Case No. 18-30924 HLB.

1 respect to its ongoing financial performance and to try and work out with MUFG Union Bank,  
2 N.A. (the “Bank”) to facilitate an orderly wind down. Burbank Declaration, ¶ 5. Burbank states  
3 that the Bank was unwilling to work with the Debtor to implement an orderly transition of client  
4 matters to successor firms, and as a result, the Debtor filed its chapter 11 case in order to  
5 implement its plan of dissolution. *Id.*

7 11. As of August 23, 2018, the Debtor’s current cash totaled approximately \$273,000,  
8 which consists of checks received after the Petition Date, plus anticipated funds to be received by  
9 the Bank. *Id.* at ¶ 7.

11 12. As of the Petition Date, the total collateral in accounts receivable subject to the  
12 Bank’s asserted liens is approximately \$7.6 million. *Id.* at ¶ 8.

13 13. The Debtor requests the Court authorize a replacement lien in favor of the Bank  
14 and authorize the use of cash collateral of the Bank on an interim basis through September 14,  
15 2018, for necessary expenses in the amount of \$556,676 plus a 10% variance, for the week  
16 ending August 31, 2018; \$395,974 plus a 10% variance for the week ending September 7, 2018;  
17 and \$711,032 for the week ending September 14, 2018, plus a 10% variance pursuant to the  
18 proposed Budget attached as Exhibit A to the Burbank Declaration. *Id.* at ¶ 9.

20 14. In its Cash Collateral Motion, the Debtor requests a final hearing to be set for the  
21 week ending September 14, 2018, and a briefing schedule for approval of the final use of cash  
22 collateral through November 2, 2018. ECF No. 14, p. 2.

### 24 **III. JURISDICTION AND STANDING**

25 Under 28 U.S.C. § 586(a)(3), the United States Trustee is charged with supervising the  
26 administration of cases and trustees “by, whenever the United States trustee considers it to be  
27 appropriate” taking certain action. 28 U.S.C. §§ 586(a)(3)(A) – (I). This duty is part of the  
28 United States Trustee’s responsibility to enforce the laws as written by Congress and interpreted

1 by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys.,*  
2 *Inc.)*, 33 F.3d 294, 295-96 (3rd Cir. 1994).

3 Under 11 U.S.C. § 307, the United States Trustee has standing to be heard and to object  
4 to the First Day Motions addressed herein. 11 U.S.C. § 307.

5  
6 **IV. LEGAL ARGUMENT**

7 **1. The Cash Collateral Motion Should Be Denied.**

8 Bankruptcy Code section 363(a) defines cash collateral as “cash, negotiable instruments,  
9 documents of title, securities, deposit accounts, or other cash equivalents.” 11 U.S.C. § 363(a).  
10 Section 362(c) of the Bankruptcy Code provides that:

11 (c)(2) The trustee may not use, sell, or lease cash collateral under  
12 paragraph (1) of this subsection unless –

13 (A) each entity that has an interest in such cash  
14 collateral consents; or

15 (B) the court, after notice and a hearing, authorizes  
16 such use, sale, or lease in accordance with the  
17 provisions of this section.

18 11 U.S.C. § 362(c)(2). Federal Rule of Bankruptcy Procedure 4001(b)(2) provides that a court  
19 may conduct a preliminary hearing on a motion for authority to use cash collateral, “but the court  
20 may authorize the use of only that amount of cash collateral as is necessary to avoid immediate  
21 and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2).

22 Here, the United States Trustee objects to the Cash Collateral Motion for the following  
23 reasons. First, based on the proposed Budget, the Debtor is projecting negative cash flow for the  
24 weeks ending August 31, 2018 and September 14, 2018; however, the proposed budget states  
25 that the cash balance on August 24, 2018 will be \$313,000 (accounts receivable). *See* ECF No.  
26 14. Absent the filing of Debtor’s Schedules or other information, it is unclear whether the  
27 Debtor has the \$313,000 to cover the negative cash flow for those weeks. *Id.* Indeed, as the  
28 Debtor explained in its Cash Collateral Motion, this chapter 11 case was filed in conjunction  
with a plan of dissolution designed to facilitate the wind down of its operations and the smooth  
transition of client matters to successor firms. ECF No. 16, Straus Declaration, ¶ 5.

1 Second, pursuant to the proposed Budget, there is a line item for a “Financial  
2 Consultant.” While the Debtor explained in its Cash Collateral Motion that BMP was engaged  
3 as its financial advisor prior to the Petition Date, BMP has not been employed by the estate  
4 pursuant to section 327. *See* bankruptcy docket for Archer Norris, a Professional Law  
5 Corporation, Case No. 18-30924 HLB. However, to the extent the Court is inclined to enter an  
6 order granting the Cash Collateral Motion, it should state that payments may not be made to  
7 BMP absent the approval of its employment and a court order pursuant to sections 330 or 331.

8 Third, the proposed Budget failed to include a line item to ensure timely payment of  
9 quarterly fees due pursuant to 28 U.S.C. § 1930(a).

10 Fourth, any approval of the Cash Collateral Motion on an interim basis and proposed  
11 Budget by the Court, should not be construed as approval or endorsement of the Debtor’s plan of  
12 dissolution.

13 Finally, the creditors’ committee should be afforded an opportunity to review any cash  
14 collateral arrangements.

15  
16 **2. The Wages Motion Should Be Denied.**

17 Section 507(a)(4) of the Bankruptcy Code grants priority to employee claims for wages,  
18 salaries, or commissions. The statute provides fourth priority for:

19 allowed unsecured claims, but only to the extent of \$12,850 for each  
20 individual or corporation, as the case may be, earned within 180  
21 days before the date of the filing of the petition or the date of the  
22 cessation of the debtor’s business, whichever occurs first, for – (A)  
wages, salaries, or commissions, including vacation, severance, and  
sick leave pay earned by an individual . . .

23 *See* 11 U.S.C. § 507(a)(4).

24 Similarly, section 507(a)(5) of the Bankruptcy Code provides that employees’ claims for  
25 contributions to certain employee benefit plans are also afforded priority unsecured status.  
26 Specifically, section 507(a)(5) provides fifth priority to claims for:

27 allowed unsecured claims for contributions to an employee benefit  
28 plan-

- 1 (A) arising from services rendered within 180 days before the  
2 date of the filing of the petition or date of the cessation of the  
debtor's business, whichever occurs first; but only  
3 (B) for each such plan, to the extent of –  
4 i. the number of employees covered by each such plan  
multiplied by \$12,850; less  
5 ii. the aggregate amount paid to such employees under  
paragraph (4) of this subsection, plus the aggregate  
6 amount paid by the estate on behalf of such  
employees to any other employee benefit plan.

7 See 11 U.S.C. § 507(a)(5).

8 Section 507(a) includes the maximum priority allowable per individual claimant, and any  
9 amount in excess of the statutory cap of \$12,850 is required to be treated as a general unsecured  
10 claim. See *In re Powermate Holding Corp.*, 394 B.R. 765, 772-773 (Bankr. D. Del. 2008) (“Any  
11 pre-petition unsecured claim that does not receive priority status under 11 U.S.C. § 507 is a general  
12 unsecured claim which receives payment last under a plan of reorganization or liquidation. Such  
13 claims include . . . any amounts in excess of statutory caps under various priority subsections.”);  
14 see also *In re First Magnus Fin. Corp.*, 390 B.R. 667, 672 (Bankr. D. Ariz. 2008) (“[M]ost  
15 bankruptcy courts . . . afforded them priority treatment under § 507(a), up to the amount of the  
16 statutory cap. Any excess, over the cap, was treated as an unsecured claim.”).

17 Here, the Debtor impermissibly lumps all the Remaining Employees' claims together into  
18 a single bucket and states that it will have approximately \$302,634 in accrued and unpaid pre-  
19 petition payroll that needs to be paid to the Remaining Employees on September 7, 2018. The  
20 Debtor, however, has provided no list of employees or precise amounts to be paid each of the  
21 “Remaining Employees.” See ECF Nos. 11, 13. The Straus Declaration filed in support of the  
22 Wages Motion fails to address whether any of the employees requested to be paid are insiders. *Id.*  
23 It also fails to address whether any of the Remaining Employees received notice of this bankruptcy  
24 case. *Id.* The Straus Declaration also fails to supply sufficient information regarding the nature  
25 of the employment relationship. The only information provided is that: (1) the Debtor is a 70-  
26 lawyer litigation firm; (2) as of the Petition Date it had approximately 60 non-lawyer employees;  
27 and (3) Debtor proposes to pay pre-petition wages only for those employees who are still employed  
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1 as of September 7, 2018. ECF No. 13, Straus Declaration, ¶¶ 4, 7. Additionally, the Debtor has  
2 failed to file all the required Schedules and Statement of Financial of Affairs.

3 Moreover, the United States Trustee also objects to the relief requested in the Wages  
4 Motion to the extent that any of the payments contemplated by the motion either exceed the  
5 aggregate cap set forth in Sections 507(a)(4) and 507(a)(5) or constitute impermissible transfers  
6 or obligations prohibited under Section 503(c) for each of the Remaining Employees. Debtor's  
7 request to approve expense reimbursements to employees should also be denied to the extent they  
8 implicate Section 503(c).

9 Furthermore, as discussed above, the Debtor appears to be administratively insolvent.  
10 Therefore, on this record, the Wages Motion should be denied.

11 **V. CONCLUSION**

12 WHEREFORE, the United States Trustee requests that the Court enter an order denying  
13 the First Day Motions, and granting such other relief as is just and appropriate under the  
14 circumstances. In the event that the Court grants interim relief on the First Day Motions, the  
15 United States Trustee reserves the right to object to final relief and cross-examine witnesses at an  
16 evidentiary hearing.

17  
18 Dated: August 28, 2018

TRACY HOPE DAVIS  
UNITED STATES TRUSTEE

19  
20  
21 /s/Marta E. Villacorta  
22 Marta E. Villacorta  
23 Trial Attorney  
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